UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,848	11/12/2003	Graham Hughes	05-03-010	6082

45113 7590 03/21/2008

DOCKET CLERK
PO BOX 800889
DALLAS, TX 75380

EXAMINER	
KISS, ERIC B	
ART UNIT	PAPER NUMBER
2192	
MAIL DATE	DELIVERY MODE
03/21/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/706,848	HUGHES ET AL.	
	Examiner	Art Unit	
	Eric B. Kiss	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The reply filed December 17, 2007, has been received and entered. Claims 1-21 are pending.

Response to Amendment

2. The objection to the drawings is withdrawn in view of the submitted replacement sheet.

3. The rejection of claims 15-21 under 35 U.S.C. § 101 is withdrawn in view of applicant's amendment to the specification and corresponding remarks.

4. It is unclear whether applicant's amendments to claims 8-14 positively affect the rejection of claims 8-14 under 35 U.S.C. § 101. This rejection is withdrawn, however, in view of the new rejection under 35 U.S.C. § 112 set forth below.

Response to Arguments

5. Applicant's arguments filed December 17, 2007, have been fully considered but they are not persuasive.

Regarding claim 1, Kraft discloses receiving a response from the client system indicating that the client system will perform a [task], and indicating that the client system was not being actively used when the executable program code was sent (*see, e.g., Kraft et al.* at col. 9, lines 1-27). The system of Kraft on sends indications to the server (in the form of requesting new tasks and sending results of previous tasks) when it is otherwise not being actively used (see decision block 608 in Figure 6 (checking if the client system is idle)).

Regarding claim 4, *Kraft et al.* discloses: if the client data processing system is in an idle state when the executable code is received, then sending a response to the server system, [processing] at least a portion of the executable code, and sending [] results to the server system

(*see, e.g., Kraft et al.* at col. 9, lines 1-35). Again, the system of Kraft on sends indications to the server (in the form of requesting new tasks and sending results of previous tasks) when it is otherwise not being actively used (see decision block 608 in Figure 6 (checking if the client system is idle)). The client not being actively used (i.e., idle (block 608 of Figure 6)) is a precondition for the request (block 612 of Figure 6) and the corresponding sending.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 8-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner can no longer meaningfully interpret claims 8-14 in view of applicant's amendments. Specifically, the examiner notes the following problems:

(1) Claim 8, in lines 1-3, presently recites, "A data processing system a process and accessible memory, the data processing system configured to receive a test request." The removal of the language, "having at least," in line 1 without replacement by other appropriate language makes the relationship between the processor and memory and the data processing system unclear;

(2) "configured to," in line 2 of claim 8 appears to be a transitional phrase, but the lack of a colon (:) after it seems to make this phrase only applicable to receiving a test request and not clearly applicable to the other limitations that follow;

(3) Claim 11 suffers similar problems in that the language, "having at least," has been removed without the insertion of other appropriate language, and the apparent transition, "configured to" runs into the immediately following limitation due to absence of punctuation. Here, however, the word receiving has also been removed without the insertion of other appropriate language, leaving claim 11 as reciting, ". . . configured to executable code from a server . . . "; and

(4) even if the above problems were corrected, it is unclear whether a data processing system merely being "configured to" perform certain acts necessarily requires the inclusion of software encoding the acts such that the processor would perform the acts during execution of the software. In other words, as configuration just as likely refers to hardware configuration, careful selection of a processor and memory may be construed as sufficient to meet a data processing system "configured to" perform any number of specified acts (e.g., a computer "configured to" run a Microsoft Windows operating system may entirely consist of a processor, memory, a formatted but otherwise blank hard drive, and a CD-ROM drive, even absent an installed copy of Microsoft Windows software).

8. In view of the above remarks, the examiner assumes applicant intended to retain the previous level of parallelism between method claims 1-7 and system/product claims 8-21. Accordingly, in maintaining the rejection of claim 1-7 under § 103(a) as set forth below, the examiner also maintains the § 103(a) rejection of claims 8-14 for similar reasons.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Nos. 6,112,225 (Kraft et al.) and 6,360,268 (Silva et al.).

Regarding claim 1, *Kraft et al.* discloses:

receiving a [] request (*see, e.g., Kraft et al.* at col. 9, lines 1-27);

sending executable program code, corresponding to the [] request, to a client system (*see, e.g., Kraft et al.* at col. 9, lines 1-27);

receiving a response from the client system indicating that the client system will perform a [task], and indicating that the client system was not being actively used when the executable program code was sent (*see, e.g., Kraft et al.* at col. 9, lines 1-27).

Kraft et al. discloses a task distribution process as described above, but fails to expressly disclose the distributed task being a testing task. However, in a similar task distribution process, *Silva et al.* teaches the distribution of testing tasks in order to achieve more efficient testing. *See, e.g., Silva et al.* at col. 1, lines 22-48; col. 2, line 63, through col. 3, line 17. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the task distribution of *Kraft et al.* and *Silva et al.* as part of a test request distribution system in order to gain the benefits of efficient testing.

Regarding claim 2, *Kraft et al.* further discloses executable program code, corresponding to the [] request, is sent to multiple client systems (*see, e.g., Kraft et al.* at col. 7, lines 29-31). Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claim 3, *Kraft et al.* further discloses retrieving a list of client system identifiers, the client system identifiers indicating client systems to which executable program code can be sent for [processing] (*see, e.g., Kraft et al.* at col. 7, lines 29-41). Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claim 4, *Kraft et al.* discloses:

receiving executable code from a server system in a client data processing system (*see, e.g., Kraft et al.* at col. 9, lines 1-27);

if the client data processing system is in an idle state when the executable code is received, then sending a response to the server system, [processing] at least a portion of the executable code, and sending [] results to the server system (*see, e.g., Kraft et al.* at col. 9, lines 1-35).

Kraft et al. discloses a task distribution process as described above, but fails to expressly disclose the distributed task being a testing task. However, in a similar task distribution process, *Silva et al.* teaches the distribution of testing tasks in order to achieve more efficient testing. *See, e.g., Silva et al.* at col. 1, lines 22-48; col. 2, line 63, through col. 3, line 17. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the task distribution of *Kraft et al.* and *Silva et al.* as part of a test request distribution system in order to gain the benefits of efficient testing.

Regarding claim 5, *Kraft et al.* further discloses if the client data processing system is not in an idle state when the executable code is received, then no response is sent to the server and no [processing] is performed (*see, e.g., Kraft et al.* at col. 9, lines 36-55). Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claim 6, in addition to the teachings applied above, *Silva et al.* further teaches the testing being a coverage analysis test (see, e.g., Silva et al. at col. col. 1, lines 22-48). Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claim 7, *Kraft et al.* further discloses the client data processing system is in an idle state when no user is actively operating the client data processing system (*see, e.g., Kraft et al.* at col. 8, lines 47-67). Therefore, for reasons stated above, such a claim also would have been obvious.

Regarding claims 8-21, these are data processing system and computer program product claims substantially paralleling the limitations in claims 1-7. *Kraft et al.* further discloses the use of such data processing systems and computer program products in implementing the prescribed methods, *see, e.g., Kraft et al.* at Figures 3 and 4, and all other limitations have been addressed as set forth above. Therefore, for reasons stated above, such claims also would have been obvious.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (571) 272-3699. The Examiner can normally be reached on Tue. - Fri., 7:00 am - 4:30 pm. The Examiner can also be reached on alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry of a general nature should be directed to the TC 2100 Group receptionist: 571-272-2100.

/Eric B. Kiss/
Eric B. Kiss
Primary Examiner, Art Unit 2192